

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

| | | |
|----------------------------------|---|---------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | Case No. 8:09CR283 |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | ORDER |
| SHAWN A. STEWART, |) | |
| |) | |
| Defendant. |) | |

This case is before the court on defendant's Motion to Reconsider Detention (#39).

The defendant moves the court for an order releasing him with electronic monitoring to his parents as third-party custodians. The motion is denied.

After reviewing the defendant's Pretrial Services report of August 18, 2009, the defendant's judgment in the criminal case (#25 in 8:04CR444) and the September 28, 2009 Detention Order (#30), I find that the proposed placement fails to address the court's concerns as to danger given the defendant's history of noncompliance under previous supervision, and his substantial criminal history. While the court is aware of and sympathetic to defendant's issues resulting from the December 2009 automobile accident, the record reflects that after his release from the hospital he accumulated the following criminal record:

| | | | |
|----------|---------------|-----------------------------|-----------------------|
| 04/15/09 | Omaha, NE | Shoplifting/Fraud | 6/22/09: Fine-\$75 |
| 06/20/09 | Omaha, NE | Poss. Of Drug Paraphernalia | 7/27/09: Fine-\$50 |
| 06/23/09 | Omaha, NE | Oper.Dur.Susp.-2/more | 6/23/09: Jail-10 days |
| 07/09/09 | C.Bluffs, IA | Theft-2nd Degree | Dispo: Pending |
| 08/03/09 | Sarpy Co., NE | Rec. Stolen Prop.-Felony | |

Additionally, the proposed placement fails to rebut the presumption of detention under 18 U.S.C. § 3142(e).

IT IS ORDERED: The defendant's Motion to Reconsider Detention (#39) is denied without hearing.

Pursuant to NECrimR 57.2, a party may appeal this order by filing a "Statement of Appeal of Magistrate Judge's Order" within ten (10) business days after being served with the order. The party shall specifically state the order or portion thereof appealed from and the basis of the appeal. The appealing party shall file contemporaneously with the statement of appeal a brief setting forth the party's arguments that the magistrate judge's order ***is clearly erroneous or contrary to law***. The filing of a statement of appeal does not automatically stay the magistrate judge's order pending appeal. See NECrimR 57.2.

Dated this 10th day of November 2009.

BY THE COURT:

S/ F. A. Gossett
United States Magistrate Judge